

EXHIBIT B



April 25, 2019

Sam Kaplan
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Jill Eggleston, FOIA Officer/Public Liaison
United States Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO. 64064-8010

Catrina Pavlik-Keenan, FOIA Officer:
Fernando Pineiro, FOIA Requester Service Center Contact
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NW
9th Floor, Mail Stop 1181
Washington, DC 20229

Re: Freedom of Information Act Request- Request for Expedited Response

Dear Mr. Kaplan, Ms. Eggleston, Ms. Pavlik-Kennan, Fernando Pineiro, and CBP FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), on behalf of Make the Road New York ("MRNY") for information relating to (a) the Department of Homeland Security's ("DHS" or "the agency") Notice of Proposed Rulemaking (NPRM) titled "Inadmissibility on

BROOKLYN
301 GROVE STREET
BROOKLYN, NY 11237
718 418 7690

QUEENS
92-10 ROOSEVELT AVENUE
JACKSON HEIGHTS, NY 11372
718 565 8500

STATEN ISLAND
161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
718 727 1222

LONG ISLAND
1090 SUFFOLK AVENUE
BRENTWOOD, NY 11717
631 231 2220

WESTCHESTER
46 WALLER AVENUE
WHITE PLAINS, NY 10605
914 948 8466

Public Charge Grounds" published to the Federal Register on October 10, 2018, *available at* <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>; and (b) data relating to "public charge" determinations and charges from 1999- present.

We ask that you please direct this request to all appropriate offices and departments.

A. Purpose of Request

The purpose of this request is to obtain information for the public about the NPRM and the proposed regulation's impact on non-citizen and immigrant communities. As an organization that engages in legal advocacy and public education on behalf of such communities, MRNY has an interest in understanding the potential implementation and impact of any proposed rules so as to better inform its work. Because MRNY disseminates policy and educational materials to the public, information obtained from this FOIA request will better enable the public to understand the analyses supporting the NPRM and the proposed regulation's effect on low-income and immigrant communities.

B. Request for Information Relating to the NPRM, the Proposed Regulation, and the Comment Review Process

MRNY requests:

- (1) all emails, communications and analyses related to the NPRM, the proposed regulation, and the comment review process, sent by the Department of Homeland Security ("DHS"), including but not limited to subcomponents United States Citizenship and Immigration Services ("USCIS") and USCIS Office of Policy ("USCIS OOP"), Immigration and Customs Enforcement ("ICE") and ICE Office of Policy ("ICE OOP") and U.S. Customs and Border Protection ("CBP")) to the Office of Information and Regulatory Affairs ("OIRA") and/or OMB; and
- (2) any other emails, communications and analyses related to the NPRM, the proposed regulation, and the comment review process, between or among DHS, USCIS, USCIS OOP, ICE, ICE OOP, CBP and/or (a) any part of the Executive Branch; (b) Congressional member or staff, and/or (c) any other person or entity outside the Executive Branch.

C. Request for Information Relating to "Public Charge" Data

MRNY requests data, including statistics, charts, and numbers, on:

- (1) The number of individuals denied admission into the United States based upon a public charge or likely to become a public charge finding from 1999- Present, broken down by year, by country of origin, and by gender;
- (2) The number of individuals denied an adjustment of immigration status based upon a public charge or likely to become a public charge finding from 1999- Present, broken down by year, by country of origin, and by gender;
- (3) The number of individuals referred for removal based upon a public charge or likely to become a public charge finding from 1999- Present, broken down by year, by country of origin, and by gender;

- (4) The number of individuals placed in removal proceedings based upon a public charge or likely to become a finding from 1999- Present, broken down by year, by country of origin, and by gender; and
- (5) The number of individuals deported from the United States based upon a public charge or likely to become a public charge finding from 1999- Present, broken down by year, by country of origin, and by gender.

D. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM,DVD, hard drive or other hardcopy media;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the Requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

E. The Requester

Make the Road New York is a non-profit, membership-based 501(c)(3) organization dedicated to informing, engaging, and empowering immigrant, Latino, and working-class communities in New York City. MRNY has more than 22,000 dues-paying members residing in New York City, Long Island, and Westchester County. Its mission includes educating the public about civil rights issues affecting working-class and immigrant communities through electronic newsletters, reports, fact sheets, trainings, curricula, classes, and other educational and informational material. MRNY regularly conducts research and analysis and publishes reports, fact sheets, and other informational material on issues important to the immigrant, Latino, and working class communities it serves. MRNY also disseminates information and analyses on pending and proposed legislation and mobilizes community members to advocate to their legislators, and engages in organizing and public-policy advocacy efforts; these efforts include substantial outreach to policymakers and communication with the media. MRNY frequently releases media statements, and disseminates information about local, state, and national issues to its thousands of members and to the public at large.

F. Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. See 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" may be established where "a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." Id. § 552(a)(6)(E)(v)(I). There is a void of information surrounding the scope and intention of the NPRM. This void poses a real and imminent threat to the lives of immigrants and to their U.S. citizen children --including numerous MRNY members -- who are forgoing the use of crucial healthcare and nutritional assistance benefits for fear of repercussions to their immigration statuses. If this informational void has not already caused the death or serious injury of a person who did not seek healthcare, it certainly will. Indeed, recent publicly disseminated information indicates that the NPRM could seriously derail U.S. efforts to combat the HIV epidemic. AIDS United, Trump Administration's Public Charge Rule Would Derail Efforts to End the U.S. HIV Epidemic, *The Body* (December 7, 2018)

A "compelling need" may also exist where there is an "urgency to inform the public concerning actual or alleged Federal Government activity," and the requesting party is "primarily engaged in disseminating information." Id. § 552(a)(6)(E)(v)(II). There is an urgent need to inform the public of the policies, analyses, and decision-making undergirding the NPRM: non-citizens and their U.S. citizen children must be free to utilize the crucial benefits for which they are eligible, and the public must be able to meaningfully engage with the political and legal issues surrounding these policies, to be equipped to engage in the notice and comment process and otherwise advise clients on the final rules. It is clear that public interest in this information is extremely high, as it is a subject of widely-disseminated press reports and hotly debated reporting and opinion writing in leading news outlets throughout the country. See, e.g., Sung Yeon, The Public Charge Rule Is Another Tactic to Strike Fear Among Immigrant Families, *The Hill* (December 7, 2018); Alicia Wilson and Catalina Sol, A Proposed New 'Public Charge' Rule puts Children's Health Insurance at Risk, *The Washington Post* (December 18, 2018); Uncovered California, Will Undocumented Immigrants Avoid New State Health Benefits, *Los Angeles Daily News* (April 17, 2019).

In recent weeks, the need for this information has grown, as news reports have documented impatience on the part of the Administration for quick action on the proposed regulation. See e.g. Dara Lind, Homeland Security Secretary Kirstjen Nielsen's Resignation, Explained, *Vox* (April 7, 2019). Nick Moroff, Josh Dawsey, Seung Ming, Kim, and Maria Sacchetti, Homeland Security Secretary Kirstjen Nielsen Leaving Trump Administration Amid Surge of Migrants, *The Washington Post* (April 7, 2019) .

As discussed in Part E of this request, MRNY is an organization primarily engaged in the dissemination of information.

G. Fee Waiver

The Requester is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). The Requester meets the requirements of 6 C.F.R. § 5.11(k) because

the subject of the request concerns the operations or activities of the government, and the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities.

As described in above, the Requester is a non-profit organization dedicated to civil rights, human rights, and immigrant rights, and has a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government's record and position on noncitizens' rights and policy matters. The Requester has undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration actions and policies, and their effects on alien and immigrant communities.

Access to this information is crucial for the Requester and the communities it serves to evaluate such actions and their potential detrimental effects. Requester is an advocacy organization that publishes reports, hosts frequent community education forums, and engages in litigation. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media."); see 6 C.F.R. § 5.1 l(d). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requester's undersigned counsel to obtain consent to incur additional fees.

H. FOIA improvement Act of 2016

We call your attention to the bipartisan FOIA Improvement Act of 2016, which codifies a FOIA "presumption of openness, making it a permanent requirement for agencies." Following these amendments, an agency's determination that a record satisfies a FOIA exemption, such as the exemption for inter-agency deliberations, is not sufficient to justify withholding the record. Instead, an agency may withhold a record "only if - (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) the disclosure is prohibited by law." See 5 U.S.C. § 552(a)(8)(A). In addition, the amendments require that agencies "(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information." *Id.*

I. Certification & Conclusion

The Requester certifies that the above information is true and correct to the best of the Requester's knowledge. See 6 C.F.R. § 5.5(d)(3). If this Request is denied in whole or in part, the Requester asks that you justify all deletions by reference to specific exemptions of FOIA. The Requester expects you to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for waiver of fees.

If you have any questions regarding the processing of this request, please do not hesitate to contact Sienna Fontaine, Esq., at (718) 565-8500 ext. 4612. Please direct all applicable Records to: Sienna Fontaine, MRNY, 301 Grove Street, Brooklyn, NY 11237 and to sienna.fontaine@maketheroadny.org.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Sienna Fontaine', written over a horizontal line.

Sienna Fontaine
Co-Legal Director